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January 31, 2012

The Honorable Dora L. Irizarry
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: Favors v. Cuomo, 1:11-cv-05632-DLI-RLM

Dear Judge Irizarry:

Defendants Dean G. Skelos, Sheldon Silver, John J. McEneny, Roman Hedges, Michael F. Nozzolio, and Welquis R. Lopez respectfully respond to Plaintiffs' letter of January 30, 2012 (DE 65), regarding Judge Sharpe's recent order in *United States v. State of New York*, No. 10-cv-01214 (N.D.N.Y.). Plaintiffs' contention that Judge Sharpe's order setting New York's congressional primary election for June 26 "reinforces the ripeness of this action" and hastens the purported need to appoint a special master (DE 65 at 1) is incorrect for at least three reasons.

First, as a matter of law, Judge Sharpe had no jurisdiction over New York's primary elections for State Assembly and State Senate, which Plaintiffs implicitly recognize (*see id.*)—and those elections remain scheduled for September under state law. *See* N.Y. Elec. Law § 8-100(a). Thus, in all events, Judge Sharpe's order does nothing to affect, much less alter, the fact that any judicial intervention in the Legislature's ongoing state legislative redistricting efforts would be premature given the many months until the September primaries. *See* Reply in Support of Certain Defendants' Motion to Dismiss Plaintiffs' Complaint, or in the Alternative, to Stay this Case at 4 ("Defs.' Reply") (DE 53).

Second, as Judge Sharpe acknowledged, the order does not "preclude[] New York from . . . selecting a different date" for its congressional primaries, so long as that date complies with federal law. Sharpe Order at 7 (DE 65 at 8). The date that complies with federal law is 80 days before the general election on November 6—*i.e.*, August 18. *See id.* at 8 (DE 65 at 9). Indeed, the Legislature can change not only the primary date, but also the political calendar leading up to the congressional primaries. *See* Defs.' Reply at 6. Any effort to commence judicial redistricting before "the 'eleventh hour' is upon us" is premature, *Rodriguez v. Pataki*, 207 F. Supp. 2d 123, 125 (S.D.N.Y. 2002) (per Walker, C.J.; Koeltl, J.; and Berman, J.), and could result in wasted resources and irreparable voter confusion if a judicially drawn plan is subsequently overridden by a legislative enactment. *See* Defs.' Reply. at 5. In short, even with respect to the congressional plan, there is plenty of time for the Legislature to act.

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Third, even if the June 26 congressional primary date were final, the time for this Court's intervention still has not yet arrived. Plaintiffs have not asserted a right to an extended campaign, but instead only the alleged injury of voting in districts that are malapportioned under the 2010 Census. *See id.* at 5–6. But federal courts do not step into a state's purview and begin taking steps toward drawing redistricting plans until approximately four months before the next primaries, *see id.* at 7, and prior cases that predate recent technological advances in redistricting software have shown that two weeks is plenty of time for a special master to draw a plan. *See, e.g., Puerto Rican Legal Def. & Educ. Fund, Inc. v. Gantt*, 796 F. Supp. 681, 684 (E.D.N.Y. 1992); *Rodriguez*, 207 F. Supp. 2d at 127. Even Plaintiffs concede that the current political calendar for June 26 congressional primaries commences no later than March 20. (DE 65 at 1) That date is nearly two months from now and, of course, is subject to revision or postponement by the Legislature. *See* Defs.' Reply at 6. Therefore, the Court should delay commencing its own redistricting efforts until early March at least, when it still will have ample time to complete any judicial redistricting on Plaintiffs' preferred timeline. *See id.* at 8–9.

Judge Sharpe's order therefore does not undermine Defendants' right to dismissal or a stay of this case. If the Court finds any uncertainty in Defendants' right to this relief, it should exercise its discretion to refer Defendants' pending motion to dismiss to the three-judge court.

Very truly yours,

/s/ Michael A. Carvin

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